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Technical assistance and capacity-building

Written statement* submitted by the Human Rights Now, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 August 2015]

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- * This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The deteriorating human rights situation in Cambodia

1. Background

Cambodia has seen a troubling escalation in human rights violations over the last two years following a repressive turn of the Cambodian People's Party (CPP) led government against its critics. This campaign of repression follows the 2013 election marred by irregularities and accusations of fraud which triggered peaceful protests of historic proportions.

Violations include:

- Harassment and arbitrary detention of government critics, human rights defenders, and opposition leaders by a CPP-controlled judiciary;
- Crackdowns on peaceful demonstrations with excessive and sometimes lethal use of force by security forces;
- Restrictions on rights to free expression; and
- A series of legislation eroding basic freedoms, including the Law on Associations and Non-Government Organizations (LANGO), which limit the formation and activity of civil society and grassroots organisations with vague and discretionary rules, restricting citizens' right to association.

These developments are fueled by the ruling CPP's grip on all state institutions, including armed and security forces, the judiciary, and state agencies, which are used to silence any independent or opposition voice in order for the ruling party to retain its hold on power against any criticism or opposition.

Perennial human rights problems also continue in Cambodia, such as denials of land rights, human trafficking, torture, poor detention conditions, lack of meaningful engagement with UN human rights bodies and mechanisms, and impunity for human rights violators. These problems involve or threaten a variety of human rights violations, including fair trial rights; rights to freedom of expression, association, and peaceful assembly; and rights to life and freedom from inhuman treatment.

Human Rights Now (HRN), a Tokyo-based international human rights organization, is concerned about this rise in human rights violations and calls on Cambodia to meet its international obligations, including by legal and institutional reforms. We also call on UN Human Rights Council members to closely monitor the human rights situation in Cambodia and support a resolution in the next session to extend the mandate of the UN Special Rapporteur on the situation of human rights in Cambodia, and to call on Cambodia to meet its obligations with concrete steps.

This report provides an overview of two of these recent issues, arbitrary detentions and the LANGO, including relevant laws they violate under both Cambodian and international law. The report then ends with recommendations.

2. Harassment and Arbitrary Detention of Government Critics

In the wake of the government's recent campaign against all political opposition, there have been numerous cases of judicial harassment and arbitrary detentions of opposition members and activists, human rights defenders, community activists, trade union leaders, and youth leaders. The campaign is sustained by government control over the judiciary and the absence of any fair trial standards.

These cases include:

- The conviction of 11 members and supporters of the Cambodia National Rescue Party (CNRP), in one of the worst miscarriages of justice in 2015, for "insurrection" relate crimes based on events at a demonstration in July 2014, despite a total lack of evidence;¹

¹ <http://www.hicadho-cambodia.org/pressrelease.php?perm=389>, <http://www.bbc.com/news/world-asia-33611441>; <https://www.hrw.org/news/2015/07/21/cambodia-exonerate-11-wrongly-convicted-activists>. The charges of insurrection are listed under Cambodia Criminal Code articles 456, 457, and 459.

- The subjection of seven CNRP members of the National Assembly to outstanding insurrection charges related to the 2014 demonstration, with the ruling party warning that they are not protected by parliamentary immunity;
- The arrest of serving opposition Senator Hong Sok Hour after the Prime Minister accused him of treason for comments on a border dispute with Vietnam;
- The detention of Kong Raya, President of the Cambodia Student Network, for "incitement to commit a felony" after posting critical comments on Facebook;
- The detention of three activists from the NGO Mother Nature for protesting unlawful sand dredging;
- The arrest of two activist monks, which they state is due to their high-profile activism;
- The charging of Ny Chakrya, Head of Human Rights and Legal Aid Section of the NGO ADHOC, with "defamation" related charges after he criticized the arbitrary detention of villagers involved in a land dispute.²

Between July 20 and August 20, a total of 21 individuals were convicted or detained for criticism or opposition to the government. Others remain at high risk of arrest. Such cases highlight a situation of arbitrary prosecution for politically motivated reasons and violate Cambodia's Constitutional rights to fair trial³ and its guarantee of the "independence of the judiciary and the doctrine of the separation of powers", which requires a separation of the judiciary from government control as a political instrument.⁴

3. LANGO and the Attack on Freedom of Association

On 12 August 2015, Cambodia promulgated a new Law on Associations and Non-Government Organisations (LANGO). The LANGO creates a mandatory registration system for all domestic and international citizens groups, nongovernment organisations (NGOs), and associations, under a broad definition that covers virtually any form of citizens' group.⁵ Any activities by unregistered organizations are deemed illegal⁶ and subject to administrative penalties up to 10 million riels as well as prosecution for repeat offenders.⁷

Moreover, registered organizations are obligated to be "politically neutral." The vague definition of this standard and the absolute discretion granted by law to the CPP-controlled Ministries of the Interior (MOI) and Foreign Affairs and International Cooperation in registering and de-registering domestic and foreign organizations, respectively, allows the government to cite political bias as a pretext for shutting down any organization, such as governmental critics, opposition parties, unions, land activist organizations, communities contesting land disputes,⁸ and human rights NGOs.⁹ Without clear and non-discretionary standards, even organizations attempting to follow the law in good faith may still be prevented from registering and rendered illegal, creating a serious chilling effect on the speech and activities of even constructive organizations.

² <https://www.fidh.org/International-Federation-for-Human-Rights/asia/cambodia/cambodia-judicial-harassment-against-mr-ny-chakrya>. The charges are listed under Cambodia Criminal Code articles 305, 311 and 522. <http://www.adhoc-cambodia.org/?p=5416>. The dispute was with Takhmao Community in Siem Reap province.

³ Cambodia Constitution article 31 guarantees fair trial rights through its incorporation of the UDHR, ICCPR (Art. 19 of which establishes a right to fair trial), and other instruments. Cambodia Constitution articles 38 and 128 also guarantee various fair trial rights.

⁴ Article 51, Cambodian Constitution. Surya P. Subedi, *Report of the Special Rapporteur on the situation of human rights in Cambodia*, UN Document, A/HRC/27/70, 15 August 2014.

⁵ LANGO Article 4.

⁶ LANGO Article 9. Article 34 further contains measures to terminate foreign NGOs and associations that have not been registered or have had their MOU terminated. It also includes sanctions against foreign staff of such organizations, such as deportation or criminal penalties.

⁷ LANGO Article 32. 10 million riels is equivalent to \$2500 USD, €2200 EU, and ¥305,000JPY.

⁸ <https://www.cambodiadaily.com/news/kratie-families-in-land-dispute-feel-effects-of-ngo-law-91796>

⁹ <http://hrm.or.jp/eng/news/2015/07/16/announcement-of-750-billion-yen-capital-support-at-the-japan-mekong-summit-meeting-brings-concern-of-critical-human-rights-situations-in-cambodia-thailand-and-myanmar-by-kazuko-ito/>. Foreign organizations or NGO violating the political neutrality conditions under Article 24 will have their memoranda of understanding (MOU) with the Cambodian government invalidated, required for their operation, Article 33, LANGO.

LANGO is inconsistent with Cambodia's obligations under both international and domestic law, beginning with freedom of association guaranteed by ICCPR Article 22 and the Cambodian constitution Article 42.¹⁰ Cambodia's 2011 Civil Code further regulates non-profit corporations with the explicit goal of developing a democratic civil society, which LANGO's anti-democratic restrictions both contradict in word and hinder in spirit. HRN is deeply concerned that the far-reaching discretion reserved by the ruling party to implement LANGO will cripple the ability for a democratic Cambodian civil society to meaningfully emerge, as LANGO threatens the existence of all associations, places their activities at the mercy of the government, and disallows any critique of government policy.¹¹

4. Recommendations

Human Rights Now offers the following recommendations.

To Cambodian authorities:

- 1) Conduct an independent, impartial, and fair appeal hearing to review the unfair conviction and lack of evidence against the 11 opposition activists, and exonerate and release them accordingly. Also conduct independent, impartial, and fair processes for other charged and detained opposition activists and dismiss their cases accordingly.
- 2) Drop all the charges against human rights defender Ny Chakrya;
- 3) Stop the prosecution of political or critical speech on issues of public interest to ensure freedom of expression.
- 4) Amend LANGO provisions undermining freedom of association, revising them in accordance with international human rights standards, including Article 22 of the ICCPR. In particular, remove mandatory registration and the ability of ministries to de-register organizations based on broad and ill-defined terms at their discretion.

To the UN Human Rights Council:

- 5) Call on the Cambodian government to make necessary revisions to LANGO in accordance with international human rights standards.
- 6) Adopt a resolution at the 30th Human Rights Council session to extend the mandate of the UN Special Rapporteur on the situation of human rights in Cambodia, and to raise issues of concern about Cambodia's violations of rights to peaceful assembly, association, and expression; fair trial rights and threats to government critics and human rights defenders; and lack of judicial independence.
- 7) Call on Cambodia to meaningfully cooperate with UN human rights bodies and mechanisms, including the current Special Rapporteur, Ms. Rhona Smith.

¹⁰ <http://hrn.or.jp/eng/news/2015/06/29/joint-statement-demanding-a-thorough-revision-of-the-draft-law-on-associations-and-non-governmental-organizations-lango-in-cambodia/>

¹¹ Freedom of Expression is guaranteed in Cambodia by Article 22 of the ICCPR and its incorporation into the Cambodia Constitution via Article 31. <http://hrn.or.jp/eng/news/2015/06/29/joint-statement-demanding-a-thorough-revision-of-the-draft-law-on-associations-and-non-governmental-organizations-lango-in-cambodia/>